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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,327

03/10/2006

Ola Fagrell

12466

1586

25570

7590

04/09/2008

ROBERTS, MLOTKOWSKI & HOBBS

P. O. BOX 10064

MCLEAN, VA 22102-8064

EXAMINER

GRAY, JILL M

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

04/09/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Dbeltran@rmhlaw.com

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<b>Office Action Summary</b>	<b>Application No.</b> 10/538,327	<b>Applicant(s)</b> FAGRELL ET AL.	
	<b>Examiner</b> Jill Gray	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/31/2006</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The prior art references disclosed in the specification have been considered.

### ***Claim Objections***

4. Claim 4 is objected to because of the following informalities: Line 2 is awkward, and it appears that the word "is" should be deleted. Appropriate correction is required.
5. Claims 6-10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 6-10 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 11 provides for the use of propylene home- or copolymer having strain hardening behavior, but, since the claim does not set forth any steps involved in the

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method/process, it is unclear what method/process applicant is intending to encompass.

A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Publication EP 0961,295 A1 (Cogan) in view of DeNicola, Jr. 5,047,446.

Cogan teaches a coaxial cable comprising a dielectric layer that can be propylene homo- or copolymer, but is silent as to the propylene having strain hardening behavior.

DeNicola discloses propylene having strain hardening behavior which can be used as wire and cable coating, wherein said propylene can be blended with other propylene homo or copolymer materials or ethylene homo- or copolymers, as required by claims 1 and 2. See entire document, and for example, column 9, lines 5-29.

It would have been obvious to one having ordinary skill in the art to use as the dielectric layer of Cogan, a propylene homo or copolymer as taught by DeNicola with the reasonable expectation of success of obtaining a dielectric layer having a more uniform cell size when foamed. Regarding claims 3 and 4, it would have been obvious to the skilled artisan during routine experimentation to purify the propylene polymer to remove entrained catalyst. Accordingly, the limitations of present claims 3 and 4 are not construed to be a matter of invention in the absence of factual evidence of unexpected

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or superior properties of the resultant cable, whereby said properties are directly related to the claimed critical catalyst residue.

Therefore, the combined teachings of Cogan and DeNicola would have rendered obvious the invention as claimed in present claims 1-4.

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Publication EP 0961,295 A1 (Cogan) in view of DeNicola, Jr. 5,047,446, as applied above to claims 1-4, further in view of European Patent Publication EP 0634,454 A1 (Comer).

Cogan and DeNicola are as set forth above. Though DeNicola teaches that his propylene can be mixed with other propylene or ethylene homo or copolymers, he is silent as to the specific amounts. Comer teaches a polyolefin composition comprising a propylene polymer having strain hardening behavior present in an amount of from 5 to 95% by weight and a non-strain hardening behavior propylene polymer present in an amount of from 95 to 5% by weight having improved thermoformability. Comer teaches that compositions containing strain hardening behavior propylene and at least 50 wt% of a non-strain hardening behavior propylene are known in the art. It would have been obvious to one having ordinary skill in the art to form a blend of a strain hardening propylene and a non-strain hardening propylene as taught by DeNicola, wherein the non-strain hardening propylene is present in an amount of at least 50 wt% as taught by Comer to achieve the predictable results of obtaining a polymer having good mechanical properties and thermoformability.

Therefore, the combined teachings of Cogan, DeNicola, and Comer would have rendered obvious the invention as claimed in present claim 5.

No claims are allowed.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-Th and alternate Fridays 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jill Gray

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Primary Examiner  
Art Unit 1794

/Jill Gray/  
Primary Examiner, Art Unit 1794